

**OPEN MINUTES - NJ STATE BOARD OF MEDICAL EXAMINERS  
DISCIPLINARY MATTERS PENDING CONCLUSION - April 13, 2016**

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A meeting of the New Jersey State Board of Medical Examiners was held on Wednesday, April 13, 2016 at the Richard J. Hughes Justice Complex, 25 Market Street, 4<sup>th</sup> Floor Conference Center, Trenton, New Jersey for Disciplinary Matters Pending Conclusion, open to the public. The meeting was called to order by George J. Scott, D.O., D.P.M., Board Vice President.

**PRESENT**

Board Members Stewart Berkowitz, Carniol, DeLuca, Haidri, Lopez, Maffei, McGrath, Miller, Rao, Rock, Scott and Shah.

**EXCUSED**

Board Members Angrist, Stephen Berkowitz, Kubiel, Metzger and Parikh.

**ABSENT**

**ALSO PRESENT**

Assistant Attorney General Joyce, Senior Deputy Attorneys General Flanzman, Dick and Gelber, Deputy Attorneys General Levine, Hafner, Cordoma, Merchant and Puteska, William V. Roeder, Executive Director of the Medical Board, Cindy Paul, M.D., Medical Director and Harry Lessig, M.D., Consultant Medical Director.

## **II. RATIFICATION OF MINUTES**

AFTER A MOTION MADE BY DR. RAO AND SECONDED  
BY MS. LOPEZ, THE BOARD UNANIMOUSLY ACCEPTED  
THE MARCH 9, 2016 MINUTES.

## **HEARINGS, PLEAS AND APPEARANCE**

10:00 A.M.      **MEHTA, Monica, M.D., 25MA03398400**  
**Complaint #94122**  
**Keith Roberts, Esquire (Brach Eichler LLC)**  
**Joan D. Gelber, SDAG, Prosecuting**  
**Steve Flanzman, SDAG, Counseling**

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On or about December 17, 2015 ALJ Candido issued her Initial Decision in the above referenced matter. The parties filed exceptions to the Initial Decision and the matter was scheduled before the Board for Hearing on those Exceptions and for acceptance, rejection or modification of the Initial Decision.

Drs. Berkowitz, Angrist, Carniol, and Metzger were recused from participation in the hearing and left the table.

Dr. Shah made a motion to move into closed session for advice of counsel. The motion was seconded by Dr. Rao and carried unanimously.

All parties, except counseling and administrative staff, left the room. Upon returning to open session, the Board convened the hearing.

After the attorneys put their appearance on the record, SDAG Joan Gelber made a motion to seal the records inasmuch as there were certain medical records which had not been redacted. She informed the Board that she would provide redacted copies to the administrative office.

The Board, upon motion made and seconded, voted to allow the parties to amend the record with redacted copies in order to

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protect the patient confidentiality.

The Motion was made by Dr. Rao and seconded by Ms. Lopez. It carried unanimously.

Mr. Roberts thanked the Board for the opportunity to present oral arguments on why the Board should sustain in its entirety the well-reasoned Initial Decision of ALJ Candido. Initially, a complaint was filed and resolved by the Board and during that hearing, there was testimony that the AG took issue with Dr. Mehta's testimony concerning her accreditation status. Following the hearing, documentary evidence was discovered showing a preliminary denial of her office-based surgery practice accreditation status and what that meant. This began a lot of controversy, Mr. Roberts continued, and ended with the filing of complaint number II. When this evidence was presented, the judge determined that no misrepresentation was made and in fact, she posited, that the State's position is in direct contradiction to that of the Joint Commission. Evidence clearly shows that even during the preliminary "denial" period, Dr. Mehta still remained in good standing. Dr. Mehta was in the middle of that process and at the time, questioned her attorney who advised her to testify that she continued to be accredited even during the preliminary denial period. Expert testimony about the Joint Commission process established that after the deficiencies are identified and the preliminary denial is issued, there is a period of time in which one can cure the deficiencies. During this period of curing, one's accreditation status remains active. He reminded the Board that Inspector Conklin from the Enforcement Bureau did not find the same deficiencies as the Joint Commission, some of which the

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attorney said were incorrect as established by the evidence presented during the hearing.

Subsequently, there was also a third complaint that dealt with risk of exposure to patients because of the deficiencies identified, e.g., dust, unsterilized pillows. The ALJ did find some items that constituted negligence, however, few if any of those deficiencies impacted patient care as patients, the attorney said, were not exposed to these deficiencies. Importantly, Mr. Roberts argued, when both inspections occurred, no patients were being treated in the room. The room was not turned over for patient use; it had not been used for about a week. The room would have been appropriately prepped when it was to be used by patients.

Judge Candido did note a technical violation of a DEP regulation concerning the moving of a C-arm by a technologist. In all the cases, only fines were assessed and no further discipline was imposed because it amounted to a technical violation. The judge found negligence without the finding of any repeated acts. The record established that there was nothing in the Joint Commission inspection which indicated there was any discussion concerning the inappropriateness of the medical assistant use of the C-arm. Absent that finding, one cannot conclude that there were any repeated acts of negligence. The state's own inspection did not reveal any notice on the issue and specific conversations about the C-arm by the state's inspector were denied by Dr. Mehta.

Mr. Roberts urged the Board to adopt, in its entirety, the decision of the ALJ.

SDAG Gelber outlined the history and issues in Complaints II and III. She reminded the Board that during Dr. Mehta's testimony in

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connection with Complaint I, she testified that her facility was accredited by the Joint Commission and submitted a certificate from January 2013. The Board accepted the document because it recognized the importance of such an inspection. She referred the Board to the Joint Commission report, subsequently discovered, from two weeks prior to Dr. Mehta's testimony which identified a number of deficiencies. The Board's Order even noted concern about the unannounced inspection that took place two weeks prior to her testimony and the preliminary denial by the Joint Commission.

Dr. Mehta's response was that she did not learn about it until the day following her hearing before the Board and that because she had the right to appeal the Joint Commission's finding, she did not consider them final decisions. SDAG Gelber contended that Dr. Mehta was well aware of the Joint Commission's inspection and the results of it prior to her testimony and that the failure to inform the Board about this was deliberate and one can conclude that it was withheld for her own benefit. SDAG Gelber noted all the deficiencies identified and stressed how egregious they were and how they put patients at risk. SDAG Gelber maintained that this was a continuation of her purposeful misleading of the Board as to the status of her facility. She outlined all the deficiencies that were found and urged the Board to recognize the importance of each of the items and the impact of these deficiencies on patient care. A month later, the D.A.G. reminded the Board, when the Enforcement Bureau inspected the office, many of the same deficiencies continued to exist. She requested that the Board modify the judge's initial decision and find repeated acts of negligence and material misrepresentation on the part of Dr. Mehta.

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Mr. Roberts took issue with many of the characterizations of SDAG Gelber. ALJ Candido, in her decision, noted that the overwhelming evidence established that Dr. Mehta did not make such material misrepresentations. Mr. Roberts quoted from the record where the Joint Commission even stated that during the preliminary denial that Dr. Mehta was still accredited. Dr. Mehta was taking corrective measures immediately following the Joint Commission inspection, even to the point of a lengthy appeal of some of the conclusions reached in the preliminary denial. More important to the judge, she did not find the preliminary denial to be as damning and/or egregious as the Attorney General maintained. The judge heard all the testimony and assessed the credibility of the witnesses, and no valid reason has been proffered to overturn those findings of credibility. Mr. Roberts concluded that the Attorney General also ignores the testimony of Dr. Mehta's attorney, who advised her that she did not need to reveal the preliminary findings. ALJ Candido reached her conclusions and expressed those in her well-reasoned decision and Mr. Roberts urged the Board to adopt it in its entirety.

The Attorney General, without objection, offered copies of certain exhibits which were entered into evidence for the convenience of the Board members.

**THE BOARD, UPON MOTION MADE AND SECONDED, VOTED TO MOVE INTO CLOSED SESSION FOR ADVICE OF COUNSEL AND DELIBERATIONS. THE MOTION, MADE BY DR. SHAH AND SECONDED BY DR. DELUCA, CARRIED UNANIMOUSLY.**

All parties, except administrative and counseling staff, left the room. Returning to open session, it announced its decision.

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Upon motion by Dr. Rao and second by Dr. Maffei, the Board announced its decision:

**THE BOARD, UPON MOTION MADE AND SECONDED, FOLLOWING REVIEW OF THE RECORD BELOW, CONSIDERATION OF FILED WRITTEN EXCEPTIONS AND ORAL ARGUMENTS, VOTED TO ADOPT THE VAST MAJORITY OF THE FINDINGS OF FACT AND CONCLUSIONS OF LAW MADE BY ALJ CANDIDO IN THE INITIAL DECISION. THE BOARD, HOWEVER, DID MODIFY THE INITIAL DECISION TO SPECIFICALLY FIND AND CONCLUDE THAT DR. MEHTA ENGAGED IN REPEATED ACTS OF NEGLIGENCE IN MAINTAINING UNSANITARY CONDITIONS WHICH PUT PATIENTS AT RISK. IT ALSO DECLINED TO REACH, AND THUS DID NOT ADOPT, THE PORTION OF THE INITIAL DECISION THAT ANALYZED THE ISSUE WHETHER DR. MEHTA WOULD BE ABSOLVED FROM LIABILITY BASED ON A DEFENSE THAT SHE RELIED ON THE ADVICE OF HER COUNSEL AS MODIFIED, THE BOARD ADOPTED THE RECOMMENDED FINDINGS TO DISMISS THE CHARGES IN COMPLAINT II.**

UPON MOTION BY DR. MAFFEI AND SECONDED BY DR. SHAH, THE BOARD UNANIMOUSLY VOTED TO ADOPT THE ABOVE MOTION. THE BOARD THEN MOVED TO THE MITIGATION OF PENALTY HEARING.

Mr. Roberts first called Joan Balducci as a witness. After being

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sworn in, Ms. Balducci informed the Board that she is employed as a health care consultant. Presently, she develops surgery centers, walking them through accreditation and licensure. She also consults with centers that get into accreditation and licensing trouble. Ms. Balducci acts as the compliance officer for Dr. Mehta and she was hired following the Joint Commission and the EB's inspections to assist in remediating the deficiencies identified. Upon being hired, she conducted her own assessment and tailored a report on all the deficiencies that she identified. She then developed a whole new policy and procedure for every aspect of the practice. Additionally, check lists were developed and put in place. As far as Ms. Balducci understood, Dr. Mehta accepted every aspect of the changes and to her knowledge she has continued to implement them and change as needed. Ms. Balducci has worked with Dr. Mehta for the last three years in trying to have Dr. Mehta maintain compliance.

Dr. Monica Mehta was sworn in as the next witness.

Dr. Mehta first purchased an office across from Christ Hospital and established an office based surgery practice. Initially, she sought advice of "experts" in the field to advise her on what she should do to make it compliant with the Joint Commission standards.

Focusing her attention on the Joint Commission inspection in June 2013, Dr. Mehta provided some background. She opened her practice in 2010 as a pain management facility and she was advised that she was doing too much. In January 2013, however, there was also a full survey and she received accreditation. Dr. Mehta recalled that she was preparing for her July 2013 hearing before the Board and when she arrived at her office, the place was

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in shambles. The inspector pointed out a number of deficiencies and she assured the inspector she would cure them. As she recalled, there were only four items that were noted to her. She was shocked when she finally read the preliminary report; at the time of the inspection, no procedures had been performed in the room for at least a week.

Dr. Mehta reviewed an exhibit, which was a report of her compliance officer she used prior to hiring Ms. Balducci. She testified that immediately following the initial inspection by the Joint Commission, she started to remediate the deficiencies. About a month later, she was inspected by the Enforcement Bureau, who also found some deficiencies which Dr. Mehta described as dust in corners of procedure room that was locked for ten days; the EEG machine/x-ray view box were in the procedure room placed there for storage while not in use with patients and some expired medications under lock and key so no one would use them. At the time of the inspections, the room was being used for pain management procedures under local anesthesia. The room had not been prepped for procedures for at least ten days prior.

Dr. Mehta recalled receiving a letter from the Board outlining the deficiencies identified by the Joint Commission and the Enforcement Bureau and she responded by outlining all the items and how each had been remediated. Additionally, she completed some courses about ASCs and an ethics course so she could educate herself in an attempt to do things properly.

On cross-examination, SDAG Gelber questioned Dr. Mehta about her actions following the establishment of the plan for correction. Dr. Mehta acknowledged that she did not get a letter informing her that the investigation was closed. Her son Dr. Ariz Mehta,

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currently has 100% ownership of the ASC at this time and she is employed at this time; she transferred the ownership in September 2015.

In closing, SDAG Gelber asked the Board to consider all the evidence and conclude that Dr. Mehta violated a number of the Board's regulations. She posited that the deficiencies put patients at risk and endangered the health, safety and welfare of the citizens of New Jersey. The deficiencies remained for a number of months and were remaining at the time of the second inspection. She urged the Board to send a message to the community in meeting out the appropriate penalty.

Mr. Roberts noted that in spite of the Attorney General's assertions, Dr. Mehta responded immediately after learning of the deficiencies identified by the Joint Commission. The procedure room, as the evidence established, had not been used for at least ten days prior. He acknowledged that there were some deficiencies, but the Board cannot lose focus that there were many inspections performed prior to the one in June 2013 in which everything was found to be in compliance. He urged the Board, if it determined that a penalty was needed, to adopt that of the ALJ, but argued that the items ultimately found negligent by the judge did not deserve a penalty at all.

Dr. Shah made a motion, seconded by Dr. Maffei to move into closed session for advice of counsel and deliberations. It carried unanimously. All parties, except counseling and administrative staff, left the room. Returning to open session, the Board announced the following.

**THE BOARD MODIFIED THE RECOMMENDED**

**SANCTIONS AGAINST DR. MEHTA TO SPECIFICALLY ADD A FORMAL PUBLIC REPRIMAND FOR ENGAGING IN REPEATED ACTS OF NEGLIGENCE, AND TO INCREASE THE PENALTY AND COST ASSESSMENTS TO \$20,000 AND 25% OF ALL COSTS AND FEES INCURRED IN THE INVESTIGATION OF THIS MATTER. THE BOARD PERMITTED A SUPPLEMENTAL COST APPLICATION THROUGH THE PROCEEDINGS BY THE ATTORNEY GENERAL AND AFFORDED DR. MEHTA 15 DAYS TO SUBMIT IN WRITING ANY OBJECTIONS TO THAT SUPPLEMENTAL FILING. THE SUPPLEMENTAL COST APPLICATION, ALONG WITH ANY RESPONSE THERETO, WILL BE CONSIDERED ON THE PAPERS AT THE NEXT BOARD MEETING.**

On motioned by Dr. Shah, seconded by Dr. Hadri, it carried unanimously.

#### **ON THE PAPERS**

**ACKERMAN, Cheryl, M.D., 25MA0609100  
Complaint #78778  
Theodore Sliwinski, Esquire  
Pavithra Angara, DAG, Prosecuting  
Debra Levine, DAG, Counseling**

Dr. Ackerman, through her attorney, filed a Motion for Emergent Relief seeking an Amended Order which would restore her license

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to an unrestricted status. The Attorney General opposed the request. The matter was considered on the papers, without oral argument.

After a motion by Dr. Shah and seconded by Ms. Lopez, the Board unanimously voted to enter closed session for advice of counsel. All parties, except Administrative and Counseling staff, left the room.

Upon returning to open session, the Board announced the following:

**THE BOARD, UPON MOTION MADE AND  
SECONDED, VOTED TO DENY RESPONDENT'S  
EMERGENT MOTION TO AMEND THE NOVEMBER  
16, 2015 CONSENT ORDER TO REMOVE ANY AND  
ALL RESTRICTIONS ON HER MEDICAL LICENSE.  
AN ORDER MORE FULLY DETAILING THE  
BOARD'S RATIONALE WILL BE ENTERED.**

The motion, made by Dr. Shah and seconded by Dr. Deluca, carried unanimously.

#### **IV. OLD BUSINESS**

There was no old business presented.

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**V. NEW BUSINESS**

There was no new business presented.

Respectfully submitted,

George J. Scott, D.O., D.P.M.,  
Board Vice President

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